

Judge

Copy 34

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE,
Plaintiff,

vs.

SUPERINTENDENT DRAGONICH,
OFFICER VALENZINE, OFFICER
ZIMMERMAN, OFFICER TAYLOR,
OFFICER NOVAK, OFFICER MEY and
OFFICER SWIFT,

Defendants.

CIVIL NO. 1:00-CV-2123

U.S. District Judge Rambo
Magistrate Judge Smyser

FILED
HARRISBURG

AUG 27 2001

MARY E. D'ANDREA, CLERK
Per. 9/5
DEPUTY CLERK

PETITION FOR RECONSIDERATION OF THIS COURT'S AUGUST
15, 2001, ORDER AND BRIEF IN SUPPORT

Comes now, the Plaintiff and his counsel John Richard Jae, the above-captioned Civil Action, a sa Layman who learned in the Arts & Sciences of the Law, within the United States, who, pursuant to Fed. R. Civ. P. 60(b) (6) and M.D.L.R. now files his Petition for Reconsideration of this Court's August 15, 2001, Order, herein, and prays, deposes & swears as follows:

I. The Motion

1. On July 11, 2001, U.S. Magistrate Judge Andrew Smyser of this Court filed his U.S. Magistrate Judge's Report And Recommendation, herein the above-entitled, thus recommending that the Defendants' Motion to Dismiss be granted and the Plaintiff's claims be dismissed without prejudice.

2. On July 22, 2001, Plaintiff John Richard Jae, filed his Motion For Enlargement of Time (to file Plaintiff's written objections to the U.S. Magistrate Judge's Report And Recommendation of July 11, 2001) and his Petition For Writ of Mandamus And Relief, herein, this case. Due to this Prison's Refusal to mail out Defendants' counsel's copy of document 1-22-01, Counsel was not served with his copy of document 1-22-01.

3. A true & correct carbon copy of both the Motion For Enlargement of Time and Petition For Writ of Mandamus were served upon counsel for the Defendants by First-Class Mail, Postage Prepaid, as required by Fed. R. Civ. P. 5(b) and M.D.L.R. on July 22, 2001.

4. On August 13, 2001, Defendants, by counsel, filed their Motion For Enlargement of Time To File Opposing Brief, herein this case.

5. In such Motion For Enlargement of Time, Defendants claim that the Attorney General did not receive counsel's copy of the Brief Petition and Brief until August 13, 2001, and request an enlargement of time until August 27, 2001, to file a brief opposing Plaintiff's petition for writ of mandamus.

7. On August 15, 2001, U.S. District Judge Sylvia H. Rambo, of this Court, entered the following order in this case:

" Before the court is a Report and Recommendation of the magistrate judge. Plaintiff has filed a motion for an extension of time to file objections to the Report and Recommendation. Plaintiff has also filed a petition for a writ of mandamus. The latter document has not been served on Defendants as required under Middle District of Pennsylvania Local Rule 7-2. Until such time as a Report has been filed on the time in which to do so has expired, the motion for mandamus will not be addressed.

IT IS HEREBY ORDERED THAT Plaintiff's motion for an extension of time is GRANTED. Objections to the Report and Recommendation shall be filed on or before August 27, 2001. No further extensions will be granted under any circumstances."

8. Plaintiff now files his Petition For Reconsideration of this August 15, 2001, Order And Brief In Support, herein this case, and moves this Court, pursuant to Fed. R. Civ. P. 60(b)(6) and M.D. LR 7.10, to Reconsider and Vacate its Order of August 15, 2001, based upon the following and:

II. BRIEF IN SUPPORT

Plaintiff ~~now~~ avers & submits that this Court should Reconsider and vacate its August 15, 2001, Order, herein this case, because stated therein such Order is incorrect and erroneous, as Defendant has indeed been actually served with a copy of this Plaintiff's August 22, 2001, Petition For Writ Of Mandamus And Brief In Support, this case, as Counsel for the Defendants, freely admits that he ^{with such} on August 6, 2001, therein Paragraph No. 5, p. 2, of Defendants' Motion For Enlargement Of Time To File Opposing Brief, herein this case, and the U.S. District Judge Rambo's statement in August 15, 2001, order that the latter document has not been served on Defendants as required by Middle District of Pennsylvania Local Rule 7-2. ^{It is} simply untrue and

enough standing alone to justify Reconsideration of this Court's August 15, 2001, order; plaintiff also avers & submits that, such August 15, 2001, order, is unfair and unjust and it defies common sense because of and based upon that which this Plaintiff states & argues, therein his Petition For Writ Of Mandamus And Brief In Support, at 3 and his Citation of Authorities, at 3-6. Plaintiff incorporates by reference ^{hereto} hereunto the same, that ~~is~~ set forth in his Petition For Writ Of Mandamus And Brief In Support, herein this case.

Obviously, if the Plaintiff complains in his Petition For Writ Of Mandamus And Brief In Support that he does "not" have sufficient enough Paper and Carbon to prepare his Objections To The U.S. Magistrate Judge's Report And Recommendation and does "not" have any envelope manilla legal envelopes in which to mail objections to this Court and to counsel for the defendants in and that SMU or Refuse to allow him to access his stored property to locate & take back to him with him his Court Case File/Papers in this case, and that he needs to all of such first before he can prepare, file & serve his written objections to U.S. Magistrate Judge's Report And Recommendation, herein this case, then common sense dictates that this Court needs to rule on his Petition For Writ Of Mandamus And Brief In Support before it can realistically expect him to file and serve written objections to The U.S. Magistrate Judge's Report And Recommendation herein this case and that, since this Court has not yet ruled on Plaintiff's Petition For Writ Of Mandamus yet, this Plaintiff cannot file and serve his written objections to The U.S. Magistrate Judge's Report And Recommendation, by August 2001, herein this case.

(W) HERETOFORE based upon the above & foregoing, herein, as well as upon set forth & argued therein his Petition For Writ Of Mandamus And Brief In Support Case, Plaintiff John Richard Doe, Prays that this Court will reconsider and Vacate its order of August 15, 2001, herein this case, and will then enter Order granting this Plaintiff the Relief which he requests therein for No. 4, of his July 22, Motion For Enlargement Of Time, herein this case.

AND HE SHALL EVER PRAY:
RESPECTFULLY SUBMITTED:

Dated: 22nd AUGUST 2001: (S)


John Richard Doe
MR. JOHN RICHARD DOE,
#BQ-2219
SCE-Greene/SMU
175 Progress Drive
175 Progress Drive, 15-77-0024

CERTIFICATE OF SERVICE

I certify that on 7/22/01, I mailed to the person listed below a
correct carbon copy of each of the Plaintiff's Petition
Writ of Mandamus And Brief In Support and Motion For
Enlargement of Time by U.S. 1st Class Mail, postage prepaid & address

Mr. Michael L. Harvey, SDA G,
Office of the Attorney General of Pennsylvania
1st Floor - Strawberry Square
Harrisburg, PA. 17130

I certify that on 7/22/01, I gave the originals of the above
documents to Prison Officer [redacted] is here for mailing to this Court.
Signed under penalty of perjury on this 22nd day of July, 2001
Waynesburg, Pennsylvania:

(S) 
MR. JOHN RICHARDSON
Plaintiff and Pro Se Counsel

JAE VS. KYLER, ET AL.
 CRI No. 1-CH-00-0815
CERTIFICATE OF SERVICE

DC-138A

**CASH
SLIP**

COMMONWEALTH OF PENNSYLVANIA
 DEPARTMENT OF CORRECTIONS

1. REQUISITIONING INMATE

INSTITUTIONAL NUMBER BQ 3219	LOCATION HB-9	DATE 8-01-01
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2. RECEIVING INMATE

INSTITUTIONAL NUMBER	LOCATION	DATE
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3. ITEMS TO BE CHARGED TO MY ACCOUNT

For Postage, Outgoing Legal Mail

TO: MR. Michael L. Harvey, SDAG
 Office of the Attorney General of Pennsylvania
 15th Floor - Strawberry Square
 Harrisburg, PA 17120

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 I/m COPY

4. INMATE'S SIGNATURE

5. OFFICIAL APPROVAL

6. BUSINESS OFFICE'S SPACE

CHARGE ENTERED

DATE

BOOKKEEPER

\$ 1.49

8-2

Plaintiff's Exhibit - B-

Dated/Executed at:

23rd AUGUST 2001:

At: Waynesburg, Pennsylvania:

served upon the person
 of carbon copy of
 identification of the
 support by way of
 addressed to:

Pennsylvania

Prison attorney here
 the above signed doc
 pursuant to 28 U.S.C.

in Richard J. JAE

S. JOHN RICHARD JAE

#BQ-3219

501 - GREENEFIELD

175 PRINCESS DRIVE

Waynesburg, PA 15370-8

Plaintiff's Exhibit - B-